

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FCC MAIL SECTION

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In the Matter of

Amendment of Sections 97.103,
97.105, and 97.113.

Station licensee and
control operator

responsibilities related to *for amateur*
~~prohibited communications.~~ *communications.*

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By: John S. Burningham, WB8PUF
P. O. Box 616
Mahopac, NY 10541-0616

Federal Communications Commission
Office of the Secretary

The purpose of this proposed rule change is to clarify and codify the responsibility for the retransmission of prohibited communications. With the technological advances of repeaters and data communication networks in the Amateur Radio Service, it has become impractical and technically impossible for a station licensee or control operator to verify the content of communications for possible rule violations of 97.113 (Prohibited transmissions). The responsibility for the content of communications should be with the originating station, and not other stations that unknowingly retransmit the prohibited communication.

Part 97.1 provides the basis for the existence of the Amateur Radio Service: 97.1(a), *providing emergency communications*; 97.1(b), *advancement of the radio art*; 97.1(c), *rules which provide for advancing skills in both the communication and technical phase of the art*; 97.1(d), *reservoir of trained operators, technicians, and electronic experts*; and 97.1(e), *international goodwill*. The proposed rule changes are within the scope of the purpose of the Amateur Radio Service as specified in 97.1(a-d); 97.1(e) is not applicable to this proposed rule change. 97.1(c) is specifically a mandate for rule changes which will advance the communication and technical phases of the art; these proposed changes are in support of the continued development of new technologies, and the development of communication and technical expertise of the licensed amateur radio operators.

It must be remembered that amateur radio operators are in the hobby not for profit or commercial gain, but as a way to expand their ability and for assisting in emergencies as communicators. While the expansion of a licensee's technical ability and technological developments are often transferred to their income producing activities and therefore the American economy, this transference of ability and technology is not against the essence and rules of the Commission; but in fact specified in 97.1(b) and 97.1(d). The transfer of this technological knowledge and development is of importance to our nation for maintaining our industrial position in the community of nations.

The essence of this proposed rule change is to place responsibility for the content of transmissions with the originating station and not with the licensees or control

operators of relaying stations. To do otherwise will drastically impede the further development of technologies, communication facilities and have a negative effect on existing developments in communication technology in the Amateur Radio Service. The existing responsibility for content of communications is shared equally between the station originating the prohibited transmission and any and all stations relaying the prohibited transmission.

The negative effect of not adopting the essence of this proposal is to force amateurs that are providing the data communication networks and repeaters to retreat from their development of communication systems. Without operational repeater and packet systems, the ability of amateur radio operators to provide local, regional, and national emergency communications will be impeded. Additionally, the loss of future technological developments in the communication and radio arts could negatively effect our nation's dominant position in science and technology.

Repeaters by their design and use, make prior restraint impossible for a station licensee or control operator of the repeater. It is impossible to know the content of a transmission until after it is transmitted; by existing rules, the station licensee would already be in violation of the rules before it is humanly possible to know the rules were being violated. Digital packet amateur radio communications over existing networks is so voluminous that for each station licensee or control operator to review the content of all messages traveling over their portion of the network is impractical and impossible for any communication service.

The Commission nor other governmental authorities hold the licensees and owners of the public switched telephone network responsible for the content of the communications carried. It is against common sense to even conceive of holding the telephone companies legally responsible for the content of communications; to do so would require the telephone companies to hire a large percentage of population to listen in on every telephone communication and have an audio delay built into their network so censors could ensure the content was not in violation of Commission rules and other governmental laws. The same concepts about communication content should apply to the Amateur Radio Service as to other public networks.

The burden of legal responsibility and possible monetary forfeiture for content of communications must be placed on the shoulders of the originating station's control operator, the only point in the chain of a communication where a licensed amateur radio can realistically be expected to exercise good judgment and compliance with the FCC Rules as related to content of the communication. It is impossible for the station licensee or control operator of a repeater to know the content of a communication prior to its transmission if they are not the originating station. In the packet networks that exist today, thousands of messages are routed over the network by computer, being repeated by network nodes along the route, it is beyond the scope of the voluntary station licensees and control operators to monitor all traffic prior to transmission; requiring such is not realistic in today's technology.

These proposed changes to Part 79 will facilitate a continuing development of new technology and operating practices, while updating the rules to reflect the changes that have taken place in the art. Progress is important not only in technology, but in the rules and regulations that govern our conduct in the application of the technology.

I propose the following rule changes to Part 97:

Change 97.103(a):

Existing wording:

The station licensee is responsible for the proper operation of the station in accordance with FCC Rules. When the control operator is a different amateur operator than the station licensee, both persons are equally responsible for the proper operation of the station.

Proposed wording:

The station licensee is responsible for the proper technical operation of the station in accordance with FCC Rules; this includes all FCC Rules except 97.111 and 97.113. When the control operator is a different amateur operator than the station licensee, both persons are equally responsible for the proper technical operation of the station.

Change 97.105

Existing wording:

97.105 Control operator duties.

(a) The control operator must ensure the immediate proper operation of the station, regardless of the type of control.

(b) A station may only be operated in the manner and to the extent permitted by the privileges authorized for the class of operator license held by the control operator.

Proposed wording:

97.105 Control operator duties and responsibilities.

(a) The control operator must ensure the immediate proper technical operation of the station, regardless of the type of control.

(b) A station may only be operated in the manner and to the extent permitted by the privileges authorized for the class of operator license held by the control operator.

(c) The control operator is responsible for the content of all transmissions originating at a station as defined in 97.111 and 97.113. The control operator of an auxiliary, repeater, space station, or station transmitting RTTY or data emission codes which is retransmitting or relaying communications originating from other stations is not to knowingly allow the station to transmit communications that are in violation of 97.111 or 97.113.

Change 97.113(a):

Existing wording:

No amateur station shall transmit any communication the purpose of which is to facilitate the business or commercial affairs of any party.

Proposed wording:

No amateur station shall knowingly transmit any communication the purpose of which is to facilitate the business or commercial affairs of any party.

Add 97.113(g):

Proposed wording:

Station licensee and control operators of auxiliary, repeater, space station, and digital packet stations, retransmitting the radio signals or digital messages of other amateur station shall not knowingly allow the transmission of communications that are in violation of 97.113.